

STATE OF NORTH DAKOTA
EDUCATION STANDARDS AND PRACTICES BOARD

IN THE MATTER OF:)	RECOMMENDED
)	FINDINGS OF FACT,
The Teaching License of)	CONCLUSIONS OF LAW,
Angela L. Poitra)	AND ORDER
)	
)	OAH File No. 20040402

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Angel L. Poitra (“Poitra”) filed an application for a North Dakota Educator’s Professional License (“teaching license”) with the Education Standards and Practices Board (“Board”) in July 2004. On August 18, 2004, counsel for the Board, Assistant Attorney General Bill Peterson, issued to Poitra a Notice of Denial of Application and Right to Request Hearing. On September 13, 2004, Poitra, through her counsel, Mr. Clark J. Bormann, Bismarck, requested a hearing on the denial. On September 23, 2004, Mr. Peterson issued an Amended Notice of Denial of Application and Right to Request Hearing. On September 28, 2004, Mr. Bormann wrote to Mr. Peterson saying that the amended notice did not affect Poitra’s decision to request a hearing.

On November 3, 2004, the Board, through Mr. Peterson, requested the designation of an administrative law judge from the Office of Administrative Hearings to conduct a hearing and to make recommended findings of fact and conclusions of law, and issue a recommended order in regard to this matter. On November 4, 2004, the undersigned ALJ was designated as hearing officer.

A prehearing conference was held on November 16, 2004, and thereafter the ALJ issued a Notice of Hearing. The notice scheduled a hearing for December 14, 2004. The issue was specified in the notice as “[w]hether under N.D.C.C. § 15.1-13-25 and N.D. Admin. Code §

67.1-02-02-06(4), the Board properly denied Angel L. Poitra's application for a North Dakota Educators (*sic*) Professional License ('teaching license')."

The hearing was held as scheduled. Ms. Poitra appeared, represented by Mr. Bormann. Mr. Peterson appeared representing the Board. Mr. Peterson called no witnesses but offered exhibits 1-10, all of which had been stipulated as to foundation at the prehearing conference, and all of which were admitted. Mr. Bormann offered exhibits 11-13, all of which were admitted. *See* attached exhibit list. Poitra testified in her own behalf, and Mr. Bormann called two other witnesses, Mr. John Gourneau, Poitra's probation officer, and Dr. Paul Dauphinais, a North Dakota licensed psychologist, to testify for Poitra.

At the close of the evidentiary portion of the hearing, counsel made oral closing argument.

Based on the evidence presented at the hearing and the oral argument of counsel, the administrative law judge makes the following recommended findings of fact and conclusions of law.

FINDINGS OF FACT

1. Poitra is a 32 year old married woman with three children. She has a 1998 BS degree from North Dakota State University, in psychology. In May 2004, Poitra obtained a graduate degree from Minot State University, an Education Specialist degree from the Minot State School Psychology program. If licensed by the Board, Poitra intends to work as a school psychologist for Turtle Mountain Schools, Belcourt, North Dakota. *See* exhibit 3.

2. In July 2004, Poitra applied for a teaching license with the Board. Exhibit 2.

3. While working as an evaluation counselor for the Turtle Mountain Band of Chippewa, Adult Alternative Drug Court ("Drug Court"), in 1999 and 2000, Poitra engaged in

actions for which she was subsequently criminally charged. She was charged in U.S. District Court, District of North Dakota (“the Court”) with one count of embezzlement from an Indian Tribal Organization. She pled guilty to the count and, on March 8, 2004, was sentenced. *See* exhibit 1, Judgment in a Criminal Case, Case No. C4-03-072-02.

4. The criminal charges stemmed from improper claims on vouchers for expenses for motel rooms and mileage while traveling with another employee on Drug Court business. *See* exhibit 5. The total amount of loss to the Drug Court as a result of the two employees' actions was \$3,563.36. Exhibit 1.

5. The Court sentenced Poitra to supervised probation (no jail time) for a period of two years, and ordered Poitra to pay restitution in the amount of \$1750, at \$100 per month. It ordered no fine. As part of her probation, Poitra is required to complete 100 hours of community service to a civic or non-profit organization. Exhibit 1.

6. Poitra has made payments of restitution as required to date and has completed a portion of her community service hours. She is otherwise in compliance with the conditions of her probation.

7. The evidence shows that Poitra is eligible for early termination of her probation, provided she has made payments completing restitution in the amount of \$1750, and provided that she has completed all of her 100 community service hours. Poitra said that she intends to meet the early termination requirements which, if she does, according to her probation officer, would allow for termination of probation by March 8, 2005, at the earliest. If Poitra takes longer to make payments completing restitution and to complete all of her community services hours, than she anticipates, she could still be eligible for early termination of her probation but at a later date, when she completes restitution and community service.

8. Poitra also has job experience as a Job Training Partnership Act employee, as a credit card company employee, as an administrative assistant for Tribal Services, Inc., and as a website developer for Turtle Mountain Community College. She also completed an internship as part of her degree requirements for the Minot State University School Psychology program at the Turtle Mountain Schools. In none of these jobs or internships has she been involved in anything comparable to the Drug Court improper claims situation. She has not before or since been charged with a crime.

9. Poitra has been very forthright, open, and honest in her statements and explanations with regard to the Drug Court improper claims. *See* exhibit 5. Poitra did not try to hide her criminal conviction. *See* exhibits 2 and 5. At the hearing, Poitra appeared to be forthright, open, and honest, acknowledging remorse for what she did, while maintaining that she has paid, in many ways, including a loss of her reputation in the community where she lives (Belcourt), because of her criminal conviction.

10. Dr. Dauphinais, her internship supervisor, and the person who would be her supervisor if she were employed as a school psychologist at Turtle Mountain Schools, spoke very highly of Poitra, as did her former supervisor at Turtle Mountain Community College, Mr. Lyle Poitra (no relation). *See* exhibits 3 and 12; *see also* letter of support from Leon Morin, Tribal Chairman, Turtle Mountain Band of Chippewa.

11. At the hearing, counsel stipulated that if the hearing officer and/or the Board did not otherwise decide, *i.e.*, allow Poitra a license earlier, as a result of this appeal, the Board would consider a new application for a license from Poitra as early as March 8, 2005, but no sooner than her probation for her current criminal conviction has terminated. *See* exhibit 13, at

its August 12, 2004, meeting, the Board voted to deny the issuance of an initial two-year license until Poitra has successfully completed her probation.

CONCLUSIONS OF LAW

1. Under N.D. Admin. Code § 67.1-02-02-06, the Board may deny an application for a teaching license to a person who has been convicted of a crime under the laws of the state or of the United States. N.D. Admin. Code § 67.1-02-02-06(4); *see* N.D.C.C. § 15.1-13-17(3).

2. Causes for disciplinary action against a teaching license under N.D.C.C. § 15.1-13-25, include that an individual has been convicted of, has pled guilty to, or has pled nolo contendere to an offense deemed by the board to have a direct bearing upon an individual's ability to serve as a teacher or an administrator (N.D.C.C. § 15.1-13-25(1)(d)), and that an individual having been convicted of an offense has not been sufficiently rehabilitated under N.D.C.C. § 12.1-33-02.1. (N.D.C.C. § 15.1-13-25(1)(e)).

3. Under N.D.C.C. § 12.1-33-02.1, a board must consider the following in determining sufficient rehabilitation: the nature of the offense and whether it has a direct bearing upon the qualifications, functions, or duties of the specific occupation, trade, or profession; information pertaining to the degree of rehabilitation of the convicted person; and the time elapsed since the conviction or release. N.D.C.C. § 12.1-33-02.1(2)(a)-(c). "Completion of a period of five years after final discharge or release from any term of probation... without subsequent conviction shall be deemed prima facie evidence of sufficient rehabilitation." N.D.C.C. § 12.1-33-02.1(2)(c).

4. Arguably, Poitra's 2004 criminal conviction, embezzlement, a theft related offense, has a relationship to a teacher's or school psychologist's ability to serve the public. *See Satterfield v. Board of Education of the Grand Rapids Public Schools*, 556 N.W. 2d 888, 890

(Mich. App. 1996); *Stelzer v. State Board of Education*, 595 N.E. 2d 489, 492 (Ohio App. 1991); *Kenai Peninsula Borough Board of Education v. Brown*, 691 P. 2d 1034, 1041 (Ala. 1984). One of the goals of education is to instill respect for the law. Teachers and school psychologists are role models for students. The integrity of a teacher or a school psychologist must be beyond question. See *Ambach v. Norwich*, 441 U.S. 68, 77 (1979); *Hainline v. Bond*, 824 P.2d 959, 965 (Kan. 1992); *Cochran v. Board of Education of Mexico School District No. 59*, 815 S.W. 2d 55, 64 (Mo. App. 1991).

5. Even though Poitra has been forthright, open, and honest in all of her dealings with the Board, has acknowledged her crime, is paying for it, and shows remorse, and even though witnesses have vouched for the integrity of Poitra, notwithstanding her criminal conviction, under the guidelines of N.D.C.C. §§ 15.1-13-17, 15.1-13-25, and 12.1-33-02.1, as well as N.D. Admin. Code § 67.1-02-02-06, it would seem to be unwise, and certainly unnecessary to consider Poitra to be rehabilitated at least until she has been terminated from probation, whether that be early termination or not. It appears that the stipulation entered into by counsel for the Board with counsel for Poitra is fair, *i.e.*, that the Board will again consider Poitra's application for a license as early as March 8, 2005, but no sooner than her probation for her current criminal conviction has been terminated. The evidence does not show that a different disposition of this matter is warranted. Should she successfully complete her probation, whether early or not, considering the offense and the positive evidence in Poitra's behalf, the Board should consider a favorable response to Poitra's new application for a license.

RECOMMENDED ORDER

The greater weight of the evidence shows that the Board's Amended Notice of Denial of Application and Right to Request Hearing was correct, in accordance with N.D.C.C. § 15.1-13-

25 and N.D. Admin. Code § 67.1-02-02-06, but, because of the stipulation entered by its counsel, the ALJ recommends to the Board, provided Poitra successfully complete her probation, whether early or not, and provided there arise no other reasons under applicable law for denial of her application or for disciplinary action against a teaching license, that the Board grant Poitra a teaching license pursuant to a new application being submitted by her.

Dated at Bismarck, North Dakota, this 20th day of December, 2004.

State of North Dakota
Education Standards and Practices Board

By: _____
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